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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,293	10/20/2003	Paul Dicesare	896P011488-US(PAR)	4300
2512	7590	11/01/2005	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			LYNCH, ROBERT A	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 11/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,293

Applicant(s)

DICESARE ET AL.

Examiner

Robert A. Lynch

Art Unit

3731

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 11, 12, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10 and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/20/2003</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Species having a pawl and rack configuration;
- II. Species having a first and second wedge configuration; and
- III. Species having a cleat wedge configuration.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 8 and 16 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Janik Marcovici on October 25, 2005, a provisional election was made without traverse to prosecute the invention of Species I, covered by claims 2, 3, 9, 10 and 18. Affirmation of this election must be made by applicant in replying to this Office action. Claim 5-7, 11, 12, 19 and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "48" has been used to designate both a pawl (page 9, line 5) and a rack (numerous locations), and reference character "54" has been used to

designate both a pawl (page 8, line 37) and a spring (page 8, line 33). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance. If these errors are due to a typographical error within the specification, applicant is asked to please correct these errors by amendment to the specification.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Fig. 2A contains "43". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective

action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-4, 8-10 and 13-18** are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. (U.S. 5,476,479).

Regarding **claim 1**, Green discloses:

a handle (102);

a lever member (120) coupled to the handle for grasping engagement by an operator, the lever member being moveable in opposite directions relative to the handle (column 11, lines 50-61); and

a locking and release mechanism (118) operably connecting the lever member to a force transmitting member (114) for operating the medical device at a location distant from the handle (column 11, lines 33-44);

wherein, the locking and release mechanism locks movement of the force transmitting member in one direction after movement of the lever member in a locking direction (column 11, lines 58-61), and wherein, the locking and release mechanism releases movement of the force transmitting member in the one direction after opposite

movement of the lever member in a releasing direction (column 11, lines 55-58), wherein the lever member operates the locking and release mechanism for releasing the movement of the force transmitting member in the one direction substantially upon changing movement of the lever member from the locking to the releasing direction (column 11, lines 55-61).

Regarding **claim 2**, Green discloses the locking and release mechanism comprising a pawl (124) and a rack (122) coupled to either the force transmitting member (114; see column 11, lines 35-41) or the handle respectively, wherein the pawl engages the rack after movement of the lever member (column 11, lines 58-61), and wherein the pawl disengages the rack after opposite movement of the lever member (column 11, lines 55-58).

Regarding **claim 3**, Green discloses the pawl (124) having a camming surface (134), wherein the camming surface is engaged through relative movement between the lever member and the pawl (column 11, lines 55-61), and wherein the locking and release mechanism further comprises a spring (126) biasing the pawl to engage the rack (column 11, lines 44-46).

Regarding **claim 4**, Green discloses the releasing direction being substantially opposite of the locking direction (column 11, lines 55-61).

Regarding **claim 8**, Green discloses:

a handle (102);

a lever member (120) mounted on the handle for grasping engagement by an operator, the lever member being moveable in opposite first and second directions relative to the handle over a predetermined range of motion (column 11, lines 50-61);

a locking mechanism (118) operably connecting the lever member to a force transmitting member (114) for operating the medical device at a location distant from the handle (column 11, lines 33-44); and

a release mechanism (136/138) operably connected to the lever member (column 11, lines 50-55);

wherein, the locking mechanism locks movement of the force transmitting member at a locking position located over at least part of the range of motion of the lever member after movement of the lever member in the first direction (column 11, lines 58-61), and wherein changing the direction of movement of the lever member from the first direction where the lever member is at the locking position causes the release mechanism to release movement of the force transmitting member (column 11, lines 55-58).

Regarding **claim 9**, Green discloses the locking mechanism comprising a pawl (124) and a rack (122) coupled to either the force transmitting member (114; see column 11, lines 35-41) or the handle respectively, wherein the pawl engages the rack after movement of the lever member (column 11, lines 58-61), and wherein the pawl disengages the rack after opposite movement of the lever member (column 11, lines 55-58).



Regarding **claim 10**, Green discloses the pawl (124) having a camming surface (134), wherein the release mechanism (136/138) engages the camming surface (134) through relative movement between the lever member and the pawl (column 11, lines 55-61), and wherein the locking mechanism further comprises a spring (126) biasing the pawl to engage the rack (column 11, lines 44-46).

Regarding **claim 13**, Green discloses:

a handle (102);

a finger loop mounted on the handle for receiving a finger of an operator (loop at reference numeral 106);

first (120) and second (104) lever members mounted on the handle (102) for grasping engagement by other fingers of the operator, at least one of the lever members (120) being mounted on the handle for movement in first and second directions (column 11, lines 55-61) relative to the finger loop; and

a locking and release mechanism (118) operably connecting at least one of the first (120) and second (104) lever members to a force transmitting member (114) for operating the medical device at a location distant from the handle (column 11, lines 20-29 and 50-55);

wherein, the locking and release mechanism is actuated for locking movement of the force transmitting member by movement of the at least one of the lever members in the first direction (column 11, lines 58-61), wherein the locking and release mechanism is actuated for releasing movement of the force transmitting member by movement of the at least one of the lever members in the second direction (column 11, lines 55-58),

the at least one of the lever members actuating the locking and release mechanism for releasing movement substantially upon changing direction of movement of the at least one of the lever members from the first direction to the second direction, and wherein, in the course of operating the medical device (column 11, lines 55-61), the operator can reposition his fingers between the first and second lever members with rotation of the finger within the finger loop.

Regarding **claim 14**, Green discloses the locking and release mechanism (118) locking movement of the force transmitting member (114) after application of force by the operator to at least one of the lever members and the finger loop in the first direction (column 11, lines 58-61), and wherein the locking and release mechanism (118) releases movement of the force transmitting member (114) after application of force by the operator to at least one of the lever members and the finger loop in the second direction (column 11, lines 55-58).

Regarding **claim 15**, Green discloses the finger loop being integral with the handle (Fig. 15, reference numeral 106), and wherein the first lever member and the second lever member are coupled such that the first lever member and the second lever member move in a coordinated manner. Figure 15 depicts the locking and release mechanism (118) is operably connecting the first lever member (120) to the second lever member (104) via pawl (124). Movement of the first lever member (120) in a first direction coordinates locking of translational movement of the force transmitting member (114) via the second lever member (104), and movement of the first lever member in a second direction coordinates release of previously locked translational

movement of the force transmitting member (114) via the second lever member (104).

See also column 11, lines 15-65.

Regarding **claim 16**, Green discloses the locking and release mechanism locking movement of the force transmitting member after movement of both of the lever members relative to the finger loop in a locking direction and, wherein the locking and release mechanism releases movement of the force transmitting member after movement of both of the lever members relative to the finger loop in a releasing direction. Movement of the first lever member (120) in a first direction and movement of the second lever member (104) toward finger loop (106) causes locking movement of the force transmitting member (114) (column 11, lines 20-29 and 58-61; and see Fig. 15). Furthermore, movement of the first lever member (120) in a second direction and movement of the second lever member (104) away from finger loop (106) releases movement of the force transmitting member (114) (column 11, lines 20-29 and 55-58; and see Fig. 15)

Regarding **claim 17**, Green discloses there being free play between both of the lever members and the locking and release mechanism between a locking operation and a release operation. As depicted in Figure 15, the first lever member (120) has free play to move slightly in a vertical direction before its camming surface (138) contacts the camming member (134) of the pawl (124) in the locking and release mechanism. Furthermore, as depicted in Figure 15, the second lever member can be pivoted slightly in an zone of free play wherein the force transmitting member (114) is translated

slightly, but not translated enough to engage the next ratchet tooth of the rack (122) with the pawl (124).

Regarding **claim 18**, Green discloses the locking and release mechanism comprising a pawl (124) and a rack (122) coupled to either the force transmitting member (114; see column 11, lines 35-41) or the handle respectively, wherein the pawl engages the rack after movement of the lever members in the locking direction (column 11, lines 58-61), and wherein the pawl disengages the rack after movement of the lever members in the release direction (column 11, lines 55-58).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent prior art includes Bales et al. (U.S. 5,176,702), Kolesa et al. (U.S. 5,609,601), Lichtman (U.S. 5,611,813), Peyser et al. (U.S. 5,700,270), Measmer et al. (U.S. 6,117,158) and Bacher 6,299,625).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Lynch whose telephone number is (571) 272-6465. The examiner can normally be reached on Monday-Friday 8AM to 5PM, alternate Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RL

  
**ANH TUAN T. NGUYEN**  
**SUPERVISORY PATENT EXAMINER**  
*10/22/05*